

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD J. MITCHELL, :
Plaintiff, :
v. : Case No. 3:06-cv-180-KRG-KAP
MARK McDONELL, :
Defendant :
:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on December 8, 2008, docket no. 24, recommending that defendant's motion to dismiss, docket no. 21, be granted in part and denied in part, resulting in the dismissal of the punitive damages claim in the complaint.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation. Plaintiff filed timely objections, docket no. 25; defendant neither filed objections nor responded to plaintiff's objections. The substantive issue before the court is whether the Prison Litigation Reform Act permits the award of punitive damages, while the procedural issue is whether the court's duty under 28 U.S.C. § 1915(e)(2)(B) to dismiss "at any time" matters which fail to state a claim on which relief may be granted argues in favor of accepting the Magistrate Judge's

recommendation to dismiss the punitive damages claim on a legal theory defendant has decided not to argue.

At this stage in the proceeding the punitive damages claim will remain. The sufficiency of the evidence in support of the claim can be reviewed at the summary judgment stage.

After review of the record together with the Report and Recommendation and the plaintiff's objections thereto, the following order is entered:

AND NOW, this 30th day of December, 2008, it is

ORDERED that defendant's motion to dismiss plaintiff's complaint, docket no. 21, is denied. The Report and Recommendation is adopted in pertinent part as the opinion of the Court.

BY THE COURT:



KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

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